

Tab 7

Patricia Kay Morgan

Highly Confidential  
New York, NY

January 11, 2005

1	HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY		1
2	IN THE UNITED STATES DISTRICT COURT		
3	FOR THE DISTRICT OF MASSACHUSETTS		
4	-----x		
5	In Re: PHARMACEUTICAL	)	
		)	
6	INDUSTRY AVERAGE WHOLESALE	) MDL No. 1456	
		)	
7	PRICE LITIGATION	) CIVIL ACTION NO.	
		) 01-CV-12257-PBS	
8		)	
	-----)		
9	THIS DOCUMENT RELATES TO	)	
	ALL ACTIONS	)	
10	-----x		
11	IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA		
12	IN AND FOR THE COUNTY OF MARICOPA		
13	-----		
	ROBERT J. SWANSTON, Individually and	)	
14	on behalf of himself and all others	)	
	Similarly situated,	)	
15		)	
	Plaintiff,	) Case No.	
16	v.	) CV2002-004988	
		)	
17	TAP PHARMACEUTICAL PRODUCTS,	) Vol. 1	
	INC., et al.,	)	
18		)	
	Defendants.	)	
19	-----		
20	VIDEOTAPED DEPOSITION OF PATRICIA KAY MORGAN		
21	New York, New York		
	Tuesday, January 11, 2005		
22			

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<p>226</p> <p>1 Q. And do you see on that third page</p> <p>2 there is some italicized language directly under</p> <p>3 the price list?</p> <p>4 A. I do.</p> <p>5 Q. Would you do me a favor and just read</p> <p>6 that into the record for me?</p> <p>7 A. "Wholesale and Direct List Prices,</p> <p>8 including those for the products listed herein,</p> <p>9 may not reflect actual Bristol-Myers Squibb sale</p> <p>10 prices. Certain multisource products are always</p> <p>11 sold at lower special offer prices. All products</p> <p>12 may be subject to negotiated discounts, rebates</p> <p>13 and chargebacks."</p> <p>14 Q. Now, that language does not appear in</p> <p>15 Exhibit Morgan 012, the document that's dated</p> <p>16 September 12, 1997. Is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Do you know when Bristol-Myers Squibb</p> <p>19 started to include that language in the price</p> <p>20 lists that it sent to First Data Bank?</p> <p>21 A. No, I do not.</p> <p>22 Q. Did the inclusion of that language</p>	<p>228</p> <p>1 recall ever seeing a negotiated discount, a</p> <p>2 rebate or a chargeback.</p> <p>3 Q. Let me ask you to look again at</p> <p>4 Exhibit Morgan 012, and I want to direct your attention</p> <p>5 to the statement that appears in the third</p> <p>6 paragraph on that exhibit, where it says, "Please</p> <p>7 supply AWP's for these products once they have</p> <p>8 been processed through your database." Do you</p> <p>9 see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you know whether those AWP's were</p> <p>12 in fact supplied to Bristol-Myers Squibb?</p> <p>13 MR. KERN: Objection.</p> <p>14 MR. SOBOL: Objection.</p> <p>15 MR. KERN: Lacks foundation. Asked</p> <p>16 and answered.</p> <p>17 A. It's before my time with First Data</p> <p>18 Bank.</p> <p>19 Q. Was it First Data Bank's practice to</p> <p>20 supply AWP's to Bristol-Myers Squibb after they</p> <p>21 had been determined --</p> <p>22 MR. KERN: Objection.</p>
<p>227</p> <p>1 have any impact on the way First Data Bank went</p> <p>2 about determining average wholesale prices?</p> <p>3 MR. SOBOL: Objection to form.</p> <p>4 A. You're wanting to know if the</p> <p>5 statement in italics had any impact on what we</p> <p>6 did?</p> <p>7 Q. Yes.</p> <p>8 A. I don't know that it did or did not.</p> <p>9 Q. Are you aware of any impact that it</p> <p>10 may have had?</p> <p>11 A. I'm not aware of any.</p> <p>12 Q. The language we read says, "All</p> <p>13 products may be subject to negotiated discounts,</p> <p>14 rebates and chargebacks." Has Bristol-Myers</p> <p>15 Squibb ever reported its negotiated discounts,</p> <p>16 rebates and chargebacks to First Data Bank, to</p> <p>17 your knowledge?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Has any other manufacturer?</p> <p>20 MR. SOBOL: Objection to form.</p> <p>21 A. I'm sorry, I'm just recollecting six</p> <p>22 years of experience with them, and I do not</p>	<p>229</p> <p>1 -- by First Data Bank?</p> <p>2 MR. SCHULZ: At what time?</p> <p>3 MR. EDWARDS: At any time during</p> <p>4 Ms. Morgan's tenure.</p> <p>5 A. The term "practice," that's not our</p> <p>6 practice to do that. But if a manufacturer asks</p> <p>7 us to send them, we will gladly provide them.</p> <p>8 Q. And in doing that, were you seeking</p> <p>9 the manufacturer's approval of those AWP's?</p> <p>10 MR. SOBOL: Objection to form.</p> <p>11 A. You're asking me if someone asked me</p> <p>12 to send them something, if I was asking them to</p> <p>13 approve what I sent them?</p> <p>14 Q. That's correct.</p> <p>15 A. No.</p> <p>16 Q. And to your knowledge did</p> <p>17 Bristol-Myers Squibb ever approve any of the AWP's</p> <p>18 that First Data Bank sent to it?</p> <p>19 MR. KERN: Objection.</p> <p>20 MR. SOBOL: Objection.</p> <p>21 MR. KERN: Vague and ambiguous.</p> <p>22 Assumes facts.</p>



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<p style="text-align: right;">230</p> <p>1 A. The term "approve" is very vague to 2 me, and so I'm not sure what you're asking me. 3 Q. Well, let me ask you this: Did 4 Bristol-Myers Squibb control the AWP's that First 5 Data Bank reported? 6 MR. SOBOL: Objection. 7 MR. KERN: Asked and answered. 8 A. The reason I'm hesitating is that AWP 9 is a function of the WAC, then they do have some 10 control in that which comes out of it. Do they 11 control what is actually published by our 12 company? No, they do not. 13 Q. And did Bristol-Myers Squibb control 14 the markup that First Data Bank applied to 15 wholesale list prices to determine the AWP's that 16 it reported? 17 MR. SOBOL: Objection. 18 A. No, they do not. 19 MR. EDWARDS: I have no further 20 questions. Thank you very much. 21 MR. KERN: Thank you. 22 THE VIDEOGRAPHER: Anybody else?</p>	<p style="text-align: right;">232</p> <p>1 Q. All right, let me start again. My 2 name is Tom Sobol, I work with Hagens Berman in 3 Boston, and I'll be taking your deposition for 4 the remainder of today, at least. If at any time 5 I ask a question that you don't understand, 6 please tell me and I'll do my best to make myself 7 better understood. Okay? 8 A. Okay. 9 Q. During the deposition so far today 10 and also in your prior depositions there have 11 been some discussions regarding some databases. 12 I would like to ask you some questions about 13 those. Okay? 14 A. Okay. 15 Q. And when I'm asking you these 16 questions, unless I specify otherwise, I want to 17 talk about the time period April of 1999 to the 18 present, which if I understand correctly is the 19 time during which you've been employed with First 20 Data Bank. Is that correct? 21 A. That's correct. 22 Q. I've heard some discussion about the</p>
<p style="text-align: right;">231</p> <p>1 MR. MORGENSTERN: Why don't we take a 2 break because we're going to need to switch 3 places. 4 THE VIDEOGRAPHER: We're going to be 5 going off the record. The time is now 6 3:53 p.m. 7 (Recess.) 8 THE VIDEOGRAPHER: We're going to be 9 going back on the record. The time is now 10 4:05 p.m. 11 EXAMINATION BY 12 MR. SOBOL: 13 Q. Good afternoon, Ms. Morgan. 14 A. Hi. 15 Q. My name is Tom Sobol, I'm another 16 lawyer, and I work at Hagens Berman in Boston and 17 I'll be taking -- 18 THE VIDEOGRAPHER: Counsel, I 19 apologize but are you wearing your 20 microphone? 21 MR. SOBOL: I am not. 22 (Discussion off the record.)</p>	<p style="text-align: right;">233</p> <p>1 NDDDB, is it, or NDDF? 2 A. NDDF, and there is an NDDDB also. 3 Q. Okay. So let's start with the NDDF. 4 What do those letters stand for? 5 A. National Drug Data File. 6 Q. And let's get the other databases out 7 first, and then we'll compare them. What other 8 data files are there at First Data Bank that you 9 work with? 10 A. I'm going to qualify that a little 11 bit, because there are the initials MDDB is for 12 Master Drug Database. At one point we owned 13 Medi-Span, we did divest them, so we are no 14 longer maintaining the Medi-Span file, but at 15 some of those points in time you're covering we 16 did. 17 We also -- and I'm referring to the 18 master databases, because I'm not sure of all of 19 the products that are output from those things. 20 The other one is what's called PIF, for Product 21 Information File. 22 Q. So the three main master databases</p>